



## 40 CFR Part 52

[EPA-R10-OAR-2021-0750, FRL-9189-01-R10]

### **Air Plan Approval; Washington; Update to the Yakima Regional Clean Air Agency Wood Heater and Burn Ban Regulations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve submitted revisions to the Yakima Regional Clean Air Agency (YRCAA) regulations designed to control particulate matter from residential wood heaters, such as woodstoves and fireplaces. The updated YRCAA regulations set fine particulate matter trigger levels for impaired air quality burn bans, consistent with statutory changes enacted by the Washington State Legislature. The submission also contains updates to improve the clarity of the language and align with the statewide solid fuel burning device regulations already applicable in YRCAA's jurisdiction. We are proposing to approve these changes because they meet the requirements of the Clean Air Act and strengthen the Washington SIP.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2021-0750 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or

comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt, EPA Region 10, 1200 Sixth Avenue – Suite 155, Seattle, WA 98101, at (206) 553-0256, or [hunt.jeff@epa.gov](mailto:hunt.jeff@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

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### **I. Background**

On July 1, 1987, the EPA published revised National Ambient Air Quality Standards (NAAQS) for particulate matter focused on inhalable coarse particles (PM<sub>10</sub>) that are 10 micrometers in diameter or smaller (52 FR 24634). The PM<sub>10</sub> standard most relevant to Washington was the 24-hour PM<sub>10</sub> NAAQS.<sup>1</sup> The EPA set the 24-hour PM<sub>10</sub> NAAQS at 150 micrograms per cubic meter (µg/m<sup>3</sup>), not to be exceeded more than once per year on average over a three-year period. On August 7, 1987, the EPA identified the Yakima area as a PM<sub>10</sub> “Group I” area of concern, *i.e.*, an area with a 95% or greater likelihood of violating the PM<sub>10</sub> NAAQS (52 FR 29383). The U.S. Congress subsequently designated the Yakima area as a moderate PM<sub>10</sub> nonattainment area upon enactment of the Clean Air Act Amendments of 1990 (November 15, 1990).<sup>2</sup> On March 24, 1989, the Washington Department of Ecology (Ecology) submitted a plan for attaining the 24-hour PM<sub>10</sub> NAAQS, amended with additional submissions

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<sup>1</sup> No areas in Washington violated the annual PM<sub>10</sub> NAAQS, which the EPA subsequently revoked on October 17, 2006 (71 FR 61144).

<sup>2</sup> See 40 CFR 81.348 for legal description and current designation.

between 1992 and 1995. The EPA approved the plan on February 2, 1998 (63 FR 5269). One element of the approved PM<sub>10</sub> attainment plan was the residential wood smoke curtailment program codified in local regulation at YRCAA, Article IX, *Woodstove and Fireplaces*. On February 8, 2005, the EPA redesignated the Yakima area to attainment for PM<sub>10</sub> based on the existing set of control measures contained in the attainment plan (70 FR 6591).<sup>3</sup>

On July 18, 1997, the EPA published a revision to the particulate matter standards to establish the fine particulate matter (PM<sub>2.5</sub>) NAAQS for particles that are 2.5 micrometers in diameter or smaller, based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to PM<sub>2.5</sub> (62 FR 38652). The EPA's revised 1997 particulate matter standards included a 24-hour NAAQS of 65 µg/m<sup>3</sup> for PM<sub>2.5</sub>, based on a three-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, the EPA published a revision to the PM<sub>2.5</sub> 24-hour NAAQS, lowering the level from 65 µg/m<sup>3</sup> to 35 µg/m<sup>3</sup>, based on additional evidence and health studies (71 FR 61144).

On February 2, 1998, the EPA approved Article IX, *Woodstoves and Fireplaces*, adopted by YRCAA in 1993 and 1995 (63 FR 5269). This set of adopted regulations predated the EPA's promulgation of the 1997 and 2006 PM<sub>2.5</sub> NAAQS and focused on the 1987 PM<sub>10</sub> NAAQS for residential woodstove curtailment. In a series of amendments beginning in 2005, the Washington State Legislature revised the underlying statutory authority contained in Chapter 70.94<sup>4</sup> Revised Code of Washington (RCW) (Washington Clean Air Act) regarding residential wood smoke curtailment programs to focus on the more recent 24-hour PM<sub>2.5</sub> NAAQS. In a SIP revision approved by the EPA on May 9, 2014, Ecology provided an analysis covering former PM<sub>10</sub> nonattainment areas in both Western and Eastern Washington, including the Yakima area, to demonstrate that wood smoke curtailment programs focused on the more recent 24-hour PM<sub>2.5</sub> NAAQS will provide continued maintenance of the 24-hour PM<sub>10</sub> NAAQS (79 FR 26628). The

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<sup>3</sup> Ibid.

<sup>4</sup> This statute was re-codified on June 11, 2020, to Chapter 70A.15 RCW. There were no substantive changes to the statutory text except updated cross references.

EPA agreed with Ecology's analysis and approved revisions to the statewide regulations contained in Chapter 173-433 Washington Administrative Code (WAC) *Solid Fuel Burning Devices* (May 9, 2014, 79 FR 26628). These revisions removed the PM<sub>10</sub> burn ban trigger levels and replaced them with PM<sub>2.5</sub> trigger levels, consistent with the changes to RCW 70.94.473<sup>5</sup> of the Washington Clean Air Act.<sup>6</sup>

## **II. Summary of SIP Revision**

In the October 14, 2021 submission that is the subject of this action, Ecology and YRCAA requested that the EPA approve changes to *Regulation 1*, sections 3.04 *Wood Heaters* and 3.05 *Burn Bans*, adopted by YRCAA on October 8, 2020, to replace the outdated 1993 and 1995 Article IX provisions previously approved into the SIP.<sup>7</sup> The submitted revisions, state effective on November 9, 2020, align the YRCAA wood heater and impaired air quality burn ban regulations with the Washington Clean Air Act statutory changes discussed above, as well as the EPA-approved changes to Ecology's statewide solid fuel burning device regulations. The definition of "wood heater" in Regulation 1, section 3.04 is consistent with the term "solid fuel burning device" in the Washington Clean Air Act. Specifically, section 3.04(B) *Applicability* states, "This section applies to any solid fuel burning device which, as defined by RCW 70A.15.3510, burns wood, wood products, or other nongaseous or non-liquid fuels, including those rated less than one million British thermal unit (Btu) per hour." Aside from this difference in terminology, the YRCAA regulations generally mirror and cite to the statewide Chapter 173-433 WAC provisions already applicable in YRCAA's jurisdiction. An analysis of the YRCAA regulations is included in the docket for this action.

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<sup>5</sup> Re-codified to RCW 70A.15.3580 with no substantive changes to the statutory text.

<sup>6</sup> YRCAA continues to operate a PM<sub>10</sub> monitor, in addition to the collocated PM<sub>2.5</sub> monitor, to verify compliance with both the PM<sub>10</sub> and PM<sub>2.5</sub> NAAQS (Yakima-4<sup>th</sup> Ave S, monitor ID# 530770009). Ecology's 2014 analysis, based on these collocated monitors, determined that PM<sub>2.5</sub> concentrations would need to reach 62 µg/m<sup>3</sup> before triggering the former PM<sub>10</sub> level for a stage 1 impaired air quality burn ban. Therefore, the current trigger level established under Chapter 70A.15.3580 of the Washington Clean Air Act (forecasted to reach or exceed PM<sub>2.5</sub> concentrations of 30 µg/m<sup>3</sup>) is the controlling standard. Similarly, PM<sub>2.5</sub> concentrations would need to reach 76 µg/m<sup>3</sup> to exceed the former PM<sub>10</sub> trigger level for a stage 2 impaired air quality burn ban. See 79 FR 26628 (May 9, 2014).

<sup>7</sup> We note that the October 14, 2021 submission also includes outdoor burning regulations and other general air quality regulations which the EPA will address in separate actions.

We note that the former Article IX regulations adopted in 1993 and 1995 included a “Woodsmoke Control Zone,” which imposed impaired air quality burn ban requirements on a portion of Yakima County generally corresponding to the boundaries of the northern half of the county which encompassed the former PM<sub>10</sub> nonattainment area.<sup>8</sup> YRCAA’s current regulations expand applicability of impaired air quality burn bans to all of Yakima County, except for lands located within the external boundaries of the Yakama Indian Reservation. Because this revision strengthens the SIP by expanding the geographic scope of the curtailment program, we are proposing to approve YRCAA’s elimination of the Woodsmoke Control Zone from the regulations.

### **III. Proposed Action**

The EPA is proposing to approve and incorporate by reference *Regulation 1*, sections 3.04 *Wood Heaters* and 3.05 *Burn Bans*, adopted by YRCAA effective November 9, 2020. These revisions strengthen the SIP in several ways, including by revising burn ban trigger levels to align with the Washington State Legislature’s statutory changes focused on the more recent 24-hour PM<sub>2.5</sub> NAAQS and expanding the burn ban applicability beyond the former Woodsmoke Control Zone. The EPA is also proposing to determine that *Regulation 1*, sections 3.04 *Wood Heaters* and 3.05 *Burn Bans*, adopted by YRCAA effective November 9, 2020 are consistent with section 110 of the Clean Air Act. The EPA is soliciting public comments on YRCAA *Regulation 1*, sections 3.04 *Wood Heaters* and 3.05 *Burn Bans* which will be considered before taking final action. We are also proposing to remove from the SIP the outdated 1993 and 1995 Article IX provisions *Woodstoves and Fireplaces*, which are replaced by sections 3.04 and 3.05. We note that the October 14, 2021 submission also includes outdoor burning regulations and other general air quality regulations which the EPA will address in separate actions.

### **IV. Incorporation by Reference**

In this document, the EPA is proposing to include in a final rule, regulatory text that

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<sup>8</sup> See 40 CFR 81.348 for legal description and current designation.

includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference YRCAA *Regulation 1*, sections 3.04 and 3.05 discussed in section III of this preamble and remove from the incorporation by reference YRCAA Regulation 1, Article IX which is replaced by sections 3.04 and 3.05. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR

43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of the requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with EPA policy, the EPA provided an opportunity to request consultation to the Confederated Tribes and Bands of the Yakama Nation in a letter dated April 5, 2021.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 9, 2021.

Michelle L. Pirzadeh,  
*Acting Regional Administrator, Region 10.*